

Montana Water Court  
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ELECTRONICALLY FILED

41H-0119-R-2021

December 21, 2021

Montana Water Court

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
GALLATIN RIVER BASIN (41H)  
PRELIMINARY DECREE

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CLAIMANTS: Candice Gresswell; Owen Gresswell

OBJECTOR: Farmers Canal Co

**CASE 41H-0119-R-2021**

41H 30109781

41H 30109788

41H 30109795

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **FINDINGS OF FACT**

1. The claims in this Case appeared in the Basin 41H Decree with several ownership issue remarks and objections from Farmers Canal.

2. A first Status Conference was held on September 10, 2021 for Case 41H-0119-R-2021. Water Master Julia Nordlund presided; Bill Fanning was present on behalf of the Objector Farmers Canal. All Claimants failed to appear.

3. Objector stated that it appears these claims have been abandoned.

4. Objector requested the Court dismiss the claims.

5. On September 13, 2021, the Court issued a Show Cause Deadline. This order gave Claimants until October 15, 2021 to show cause why the claims in this case should not be dismissed as abandoned. The order stated, "failure to comply with this filing deadline will be viewed as agreement that the water right should be dismissed."

6. Nothing was submitted by Claimants as of the date of this Report.

### **CONCLUSIONS OF LAW**

1. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

3. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Rule 22, W.R.Adj.R.

4. Pursuant to Section 85-2-248(9), MCA, and Rule 22, W.R.Adj.R., when a claimant fails to comply with an Order issued by the Water Court, including an Order

issued by a Water Master appointed by the Court, the Court, upon motion, or its own initiative, can among other actions: 1) amend the elements of the claim to conform with the information in the claim file or information obtained by the Court, or 2) terminate the claim.

5. Claimants failed to provide any evidence to contradict Objector's assertion that the claims have been abandoned. The assertion, combined with the lack of participation from Claimants, is enough to justify a dismissal of the claims.

#### RECOMMENDATIONS

The changes recommended above should be adopted. Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the claims 41H 30109781, 41H 30109788, and 41H 30109795 have been dismissed.

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Julia J. Nordlund  
Senior Water Master

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**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 30109781 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** CANDICE GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613  
  
OWEN GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 30109788 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** **DISMISSED**

**Owners:**

CANDICE GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613

OWEN GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.

**WATER COURT  
ABSTRACT OF WATER RIGHT CLAIM  
GALLATIN RIVER  
BASIN 41H**

**Water Right Number:** 41H 30109795 STATEMENT OF CLAIM  
**Version:** 2 -- POST DECREE  
**Status:** **DISMISSED**

**Owners:** CANDICE GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613  
  
OWEN GRESSWELL  
242 POND LILY DR  
BOZEMAN, MT 59718 8613

**Priority Date:**

**Enforceable Priority Date:**

**Type of Historical Right:**

**Purpose (Use):** IRRIGATION

**Flow Rate:**

**Volume:**

**Source Name:** WEST GALLATIN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.